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PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court		District: Southren District of New York
Name (under which you were convicted): KEVIN DAVIS,		Docket or Case No.: 02736/2005
Place of Confinement : ATTICA CORRECTIONAL FACILITY		Prisoner No.: 07-A-5542
Petitioner (include the name under which you were convicted) KEVIN DAVIS,		Respondent (authorized person having custody of petitioner) v. J. Noeth, Superintendent's
The Attorney General of the State of New York Barbara D. Underwood		

PETITION

18CV8426

1. (a) Name and location of court that entered the judgment of conviction you are challenging:

Supreme Court of the State of New York
First Judicial District Criminal Branch
100 Centre Street New York, NY 10013

(b) Criminal docket or case number (if you know):

02736/2005

2. (a) Date of the judgment of conviction (if you know):

August 3, 2007

(b) Date of sentencing:

September 24, 2007

3. Length of sentence:

(20) Twenty to Life

4. In this case, were you convicted on more than one count or of more than one crime?

☐ Yes

☒ No

5. Identify all crimes of which you were convicted and sentenced in this case:
One count of Criminal Sexual Act in the first degree P.L. 130.50(1)

Criminal Sexual Act in the first degree P.L. 130.50(1)

6. (a) What was your plea? (Check one)

☐ (1) Not guilty

☐ (3) Nolo contendere (no contest)

☒ (2) Guilty

☐ (4) Insanity plea

(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to?

Plead guilty to Criminal Sexual Act in the first degree P.L. 130.50(1)

(c) If you went to trial, what kind of trial did you have? (Check one)

☐ Jury ☐ Judge only

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

☐ Yes ☐ No

8. Did you appeal from the judgment of conviction?

☒ Yes ☐ No

9. If you did appeal, answer the following:

(a) Name of court: Appellate Division-First Department

(b) Docket or case number (if you know):

02736/2005

(c) Result:

affirmed

(d) Date of result (if you know):

December 5, 2007

(e) Citation to the case (if you know):

(59 A.D.3d 219(1 Dep't 2009).

(f) Grounds raised:

Anders v. California, 386 U.S. 738(1967) People v. Saunder, 52 A.D.2d 833(1976).

(g) Did you seek further review by a higher state court? ☐ Yes ☐ No

If yes, answer the following:

(1) Name of court:

(2) Docket or case number (if you know):

(3) Result:

(4) Date of result (if you know):

(5) Citation to the case (if you know):

59 A.D.3d 219(1 Dep't 2009).

(6) Grounds raised:

Anders v. California 386 U.S. 738(1967).

People v. Saunders, 52 A.D.2d 833(1976)

(h) Did you file a petition for certiorari in the United States Supreme Court?

☐ Yes ☒ No

If yes, answer the following:

(1) Docket or case number (if you know):

(2) Result:

(3) Date of result (if you know):

(4) Citation to the case (if you know):

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court? ☒ Yes ☐ No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: Manhattan Supreme Court

(2) Docket or case number (if you know):

02736/2005(M-4730)

(3) Date of filing (if you know):

April 18, 2008

(4) Nature of the proceeding:

440.20

(5) Grounds raised:

Appellate Counsel's application to withdraw, agreed that there were no non frivolous appellate issue.

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☒ No

(7) Result:

affirmed

(8) Date of result (if you know):

December 2, 2008

(b) If you filed any second petition, application, or motion, give the same information:

- (1) Name of court:
N.Y.S. Manhattan County Supreme Court
- (2) Docket or case number (if you know):
2736/2005
- (3) Date of filing (if you know):
Sept 9, 2013
- (4) Nature of the proceeding:
440.20
- (5) Grounds raised:
Ineffective assistance of Counsel "Gun" not operable weapon.

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☐ No

(7) Result: affirmed

(8) Date of result (if you know): March 20, 2014

(c) If you filed any third petition, application, or motion, give the same information:

- (1) Name of court:
N.Y.S. Manhattan County Supreme Court
- (2) Docket or case number (if you know):
2736/2005
- (3) Date of filing (if you know):
Don't Remember
- (4) Nature of the proceeding:
440.20
- (5) Grounds raised:
Alleyne V. United States, 133 S.ct. 2151, Descamps V. United States 133 S.ct 2276, Apprendi V. New Jersey 530 U.S. 46

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☒ No

(7) Result: affirmed

(8) Date of result (if you know):

June 11, 2014

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application,

or motion? No because the new law wasn't retroactive

(1) First petition: ☐ Yes ☒ No

(2) Second petition: ☐ Yes ☒ No

(3) Third petition: ☐ Yes ☒ No

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

My first petition was that the gun wasn't operability and the Cour produce the ballistic report.

My second petition the new law that came out wasn't retroactive.

My third petition the Cour said that I am precluded from raising the same ground.

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: Ineffective assistance of Counsel's for failure to not properly investigate defendant Criminal history for sentencing purpose.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

If my Counsel had investigated my Criminal history he would had seen that the Judge after I pleaded guilty to (C.P.W.3d°)w/ D.A.consent on my first felony conviction place me on "Interim Probation", when in fact back in 1983 that sentence was illegal because "Interim Probation", before being sentence to (5) Five years probation wasn't authorize by Statute of New York STATE and on December 5, 1983, I was sentence again for the same crime by the same Judge the same part in Manhattan County Supreme Court same Ind.No.#6994-81, that's "Double Jeopardy". If my Counsel didn't know he should had know. that Ineffective assistance of Counsel. Now they are using this same case to enhance my sentence.

(b) If you did not exhaust your state remedies on Ground One, explain why:

(c) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☒ Yes ☐ No

I put in a writ of error coram nobis

(2) If you did not raise this issue in your direct appeal, explain why:

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: 440.30

Name and location of the court where the motion or petition was filed:

Manhattan County Supreme Court 100 Centre Street New York, N.Y. 10013

Docket or case number (if you know):

2736/2005

Date of the court's decision:

January 30, 2017

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition?

☐ Yes ☒ No

(4) Did you appeal from the denial of your motion or petition?

☒ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☒ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Appellate Division-First Department

27 Madison Avenue New York N.Y. 10010

Docket or case number (if you know):

Date of the court's decision:

April 25, 2017

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have

Reargument C.P.L. < 460.15
used to exhaust your state remedies on Ground One:

Writ of Error Coram nobis

GROUND TWO:

Defendant was incorrectly sentence as, a persistent violent felony offender base upon aprior sentence of "Interim Probation, from a 1983 conviction Ind.No.6994-81 (C.P.W.3rd degree) P.L.(265.02(4) back in 1983."Interim probation was illegal by Statute.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim).

Defendant was entitled to a hearing was required to determine the merits of the defendant contention that he did not receive the effective assistance of counsel because trial counsel did not properly investigate my criminal history

Also defendant who had served (finish) his sentence of the original sentence imposed violated double jeopardy, even through the sentence imposed originally had been illegal. Counsel demonstrably failed to render "meaningful representation" and were particularly ineffective in advising defendant to plead guilty to a patently unmeritorious charge without having investigated the facts, researched the law, or developed the record.

(b) If you did not exhaust your state remedies on Ground Two, explain why:

(c) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☒ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why:

My Attorney on direct appeal put in a Anders v. California, brief.

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

440.30 and a writ of error coram nobis
Name and location of the court where the motion or petition was filed:

Manhattan County Supreme Court 100 Centre Street New York, N.Y. 10013

Docket or case number (if you know):

2736/2005

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☒ No

(4) Did you appeal from the denial of your motion or petition? ☒ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☒ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Appellate Division-First Department 27 Madison Avenue New York, N.Y.

Docket or case number (if you know):

2736/2005

Date of the court's decision:

March 27, 2018 excuse me April 17, 2018

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you :
have used to exhaust your state remedies on Ground Two

State of New York Court of Appeals
order Denying leave August 21, 2018

GROUND THREE:

- (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) If you did not exhaust your state remedies on Ground Three, explain why?

(c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☒ No

(4) Did you appeal from the denial of your motion or petition? ☒ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☒ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three:

GROUND FOUR:

- (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

- (b) If you did not exhaust your state remedies on Ground Four, explain why:

- (c) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why:

- (d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition?

☐ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition?

☐ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four:

13. Please answer these additional questions about the petition you are filing:

- (a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? ☒ Yes ☐ No

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them:

- (b) Is there any ground in this petition that has not been presented in some state or federal court? If so, ground or grounds have not been presented, and state your reasons for not presenting them:

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? ☐ Yes ☒ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available.

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? ☐ Yes ☒ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the raised.

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing:

Amelio P. Marino, ESQ 163 West 71 Street New York, N.Y. 10023

(b) At arraignment and plea:

(c) At trial:

(d) At sentencing:

Theodore M. Herlich-18B Counsel 299 Broadway, Suite 1808 New York N.Y. 10007

(e) On appeal:

EVE KESSLER, THE LEGAL AID SOCIETY CRIMINAL APPEAL BUREAU
199 WATER STREET NEW YORK, N.Y. 10038

(f) In any post-conviction proceeding:

(g) On appeal from any ruling against you in a post-conviction proceeding:

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? ☐ Yes ☒ No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? ☐ Yes ☐ No

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.*

"MY DUE DILIGENCE" After my 440.30 was denied, I was going to put another 440.30, but 9/29/15, I was diagnosed with "Prostate Cancer" I went through Radiation Treatment & Seed Implant March 15, 2016, my first surgery and my second surgery was April 20, 2017, from complication from my first surgery. (cont.)

For me due to health reason "Prostate Cancer"surgery's I was unable to accurately take care of myself needless to say to put together this application/writ of habeas corpus.(See Exhibits)

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -
 - (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
 - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
 - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant the following relief:


Dismissal of Criminal Possession of a Weapon in the third degree(265.02(4)),because the adudication require the filing of new information or any other relief to which petitioner may be entitled.

This case affect the sequentiality of the conviction of defendant. Or Penal Law 70.15,C.P.L.§220.10,and Penal Law (265.02(4) a Class "E" violent felony attempted criminal possession of a weapon 3rd°degree, C.P.L.220.10(5)(d)(iii)

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on _____ (month, date, year).

Executed (signed) on September 4, 2010.



Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition.

LAS

Tom, J.P., Saxe, McGuire, Moskowitz, Freedman, JJ.

5232-
5233

The People of the State of New York,
Respondent,

Ind. 2736/05

-against-

Kevin Davis,
Defendant-Appellant.

Steven Banks, The Legal Aid Society, New York (Eve Kessler of
counsel), for appellant.

Amended; Judgment, Supreme Court, New York County (William
A. Wetzel, J.), rendered on or about December 5, 2007,
unanimously affirmed.

Application by appellant's counsel to withdraw as counsel is
granted (see *Anders v California*, 386 US 738 [1967]; *People v*
Saunders, 52 AD2d 833 [1976]). We have reviewed this record and
agree with appellant's assigned counsel that there are no
non-frivolous points which could be raised on this appeal.

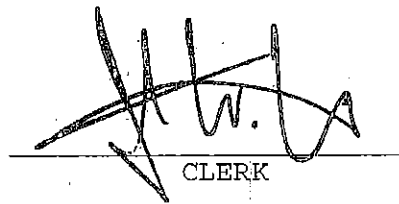
Pursuant to Criminal Procedure Law § 460.20, defendant may
apply for leave to appeal to the Court of Appeals by making
application to the Chief Judge of that Court and by submitting
such application to the Clerk of that Court or to a Justice of
the Appellate Division of the Supreme Court of this Department on
reasonable notice to the respondent within thirty (30) days after
service of a copy of this order.

Denial of the application for permission to appeal by the

judge or justice first applied to is final and no new application
may thereafter be made to any other judge or justice.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: FEBRUARY 10, 2009



CLERK

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on November 12, 2009.

Present: Hon. Peter Tom,
David B. Saxe
James M. McGuire
Karla Moskowitz
Helen E. Freedman,

Justice Presiding,

Justices.

-----X
The People of the State of New York,
Respondent,

-against-

M-1568
Ind. No. 2736/05

Kevin Davis,
Defendant-Appellant.
-----X

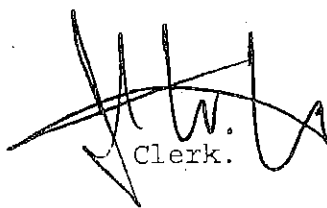
A decision and order of this Court having been entered on February 10, 2009 (Appeal Nos. 5232-5233), unanimously affirming the judgment of the Supreme Court, New York County, rendered on or about December 5, 2007,

And defendant having moved to vacate the aforesaid decision and order of this Court entered on February 10, 2009 (Appeal Nos. 5232-5233),

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon, it is

Ordered that the motion is denied.

ENTER:


Clerk.

Supreme Court
of the
State of New York

Part 23 - New York County

-----X
The People of the State of New York

INDICTMENT: 2736-2005

MOTION FOR: CPL §440.10

-against-

KEVIN DAVIS

CALENDAR DATE:
DECEMBER 5, 2016

Defendant
-----X

FEB 09 2017

Ordered that upon the papers submitted, this motion is hereby

DATE
I hereby certify that the foregoing
paper is a true copy of the original
thereof, filed in my office.

GRANTED _____

DENIED X _____

Milton Adair Tinsley
County Clerk and Clerk of the
Supreme Court New York County
OFFICIAL USE

The court issued a written decision on March 14, 2014 (attached), addressing and denying Defendant's motion to vacate judgment. On June 9, 2014, the court precluded Defendant from moving for relief based upon the same grounds previously addressed (attached). Pursuant to the previously issued decisions, Defendant's motion is denied.

Date January 30, 2017

Hon. *Neil Ross*

HON. NEIL ROSS

PT. 23 JAN 30 2017

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : FIRST JUDICIAL DEPARTMENT

BEFORE: Hon. Rolando T. Acosta
Justice of the Appellate Division

-----X
The People of the State of New York,

M - 1522
Ind. No. 2736/2005

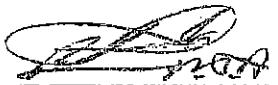
--against--

CERTIFICATE
DENYING LEAVE

Kevin Davis,

Defendant.
-----X

I, Rolando T. Acosta, a Justice of the Appellate Division, First Judicial Department, do hereby certify that, upon application timely made by the above-named defendant for a certificate pursuant to Criminal Procedure Law, sections 450.15 and 460.15, and upon the record and proceedings herein, there is no question of law or fact presented which ought to be reviewed by the Appellate Division, First Judicial Department, and permission to appeal from the order of the Supreme Court, New York, entered on or about January 30, 2017, is hereby denied.


Hon. Rolando T. Acosta
Associate Justice

Dated: April 6, 2017
New York, New York

ENTERED: APR 25 2017

To continue ground two as a citizen of the United States of America by me Invoking my Rights protected by the United States Constitution under the Fifth Amendment, Due Process Rights Double Jeopardy Clause and the Supremacy Clause that's protect me that the Federal Government has Jurisdiction which provide me that "no person... shall... be subject for the same offense to be twice put in jeopardy of life or limb".

Supremacy Clause Article VI Section [a] U.S.CONSTITUTION Article VI, Double Jeopardy Clause Fifth Amendment my Rights as a citizen of the United States of America are being violated there is not a question in mind that I am being punish twice.

The original impose sentence back in 1983, was illegal by statute of New York State and now the People of the State of New York is using this same case to treat me as a persistent violent felony offender, and this same illegal sentence was use against me on September 24, 2007, in sentence me to twenty to life after I serve my time, completed the illegal sentence and thought that as a prisoner's maximum term disturbs my legitimate expectation in the finality of my sentence, thus violating the protection against multiple punishments guarantteed by double jeopardy clause.

Now almost (14) fourteen years has past of the twenty to life sentence and I am still paying for it. My original sentence was (1) one year INTERIM PROBATION", before being sentence to (5) five years probation. After completing my (1) one year successfully", INTERIM PROBATION", I was sentence a second time to (5) five years probation on December 5, 1983, under Indictment No. #6994-81.

Was my rights violated ? Was I sentence twice ? Now on September 24,2007
my sentence was enhanced by given me twenty to life imprisonment as a
persistent violent felony offender.

✓

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : FIRST JUDICIAL DEPARTMENT

BEFORE: Hon. Rolando T. Acosta
Justice of the Appellate Division

-----X
The People of the State of New York,

M - 974
Ind. No. 2736/2005

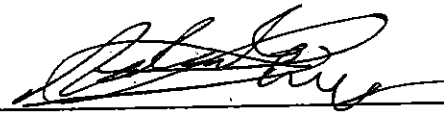
-against-

CERTIFICATE
DENYING LEAVE

Kevin Davis,

Defendant.
-----X

I, Rolando T. Acosta, Presiding Justice of the Appellate Division, First Judicial Department, do hereby certify that, upon application made by the above-named defendant for reargument of our denial of a certificate pursuant to Criminal Procedure Law, sections 450.15 and 460.15 for leave to appeal to this Court, or in the alternative, for leave to appeal to the Court of Appeals, and upon the record and proceedings herein, there is no question of law or fact presented which ought to be reviewed by the Appellate Division, First Judicial Department, and permission to appeal from the order of the Supreme Court, New York, entered on or about January 30, 2017, or for leave to appeal to the Court of Appeals, is hereby denied.


Hon. Rolando T. Acosta
Presiding Justice

Dated: March 27, 2018
New York, New York

ENTERED: APR 17 2018

Marshall

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on May 22, 2018.

PRESENT: Hon. Rolando T. Acosta,
David Friedman
John W. Sweeny, Jr.
Peter Tom,

Presiding Justice,

Justices.

-----X
The People of the State of New York,
Respondent,

-against-

Kevin Davis,
Defendant-Appellant.
-----X

CONFIDENTIAL

M-1048

Ind. No. 2736/05

A decision and order of this Court having been entered on February 10, 2009 (Appeal Nos. 5232/5233), unanimously affirming a judgment of the Supreme Court, New York County (Lewis Bart Stone, J.) rendered on September 24, 2007,

And defendant-appellant having moved, in the nature of a writ of error coram nobis, for a review of his claim of ineffective assistance of appellate counsel, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that said application is denied.

ENTERED:


CLERK

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

-against-

KEVIN DAVIS,

Defendant-Appellant.

NOTICE OF ENTRY

Indictment No. 2736/05

PLEASE TAKE NOTICE, that the within is a true copy of an Order duly filed and entered in the above-entitled action in the Office of the Clerk of the Supreme Court, Appellate Division, First Department on May 22, 2108.

Dated: New York, New York
May 23, 2018

CYRUS R. VANCE, JR.
District Attorney, New York County
One Hogan Place
New York, New York 10013
(212) 335-9000

STATE and COUNTY of NEW YORK

Kevin Davis, being duly sworn, deposes and says, that on the 14 day of June 2018, I served the within Order and Notice of Entry on the attorney for appellant (named hereafter) by enclosing a true copy thereof in a first-class, post-paid wrapper, directed to the following address, which was designated by the attorney for that purpose, and depositing the same in an official depository of the United States Postal Service within New York State:

KEVIN DAVIS 07A5542
Attica Correctional Facility
639 Exchange Street
Attica, New York 14011-0149

Sworn to before me this 14 day of June 2018

Stacy A. Leone
Notary Public

Stacy A. Leone
Notary Public, State of New York
Registration No. 01LE6342453
Qualified in Orleans County
Commission Expires May 23, 2020

Kevin Davis

COPY

State of New York Court of Appeals

BEFORE: HON. EUGENE M. FAHEY,
Associate Judge

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

-against-

KEVIN DAVIS,

Appellant.


**ORDER
DENYING
LEAVE**

Appellant having applied for leave to appeal to this Court pursuant to Criminal Procedure Law § 460.20 from an order in the above-captioned case;*

UPON the papers filed and due deliberation, it is

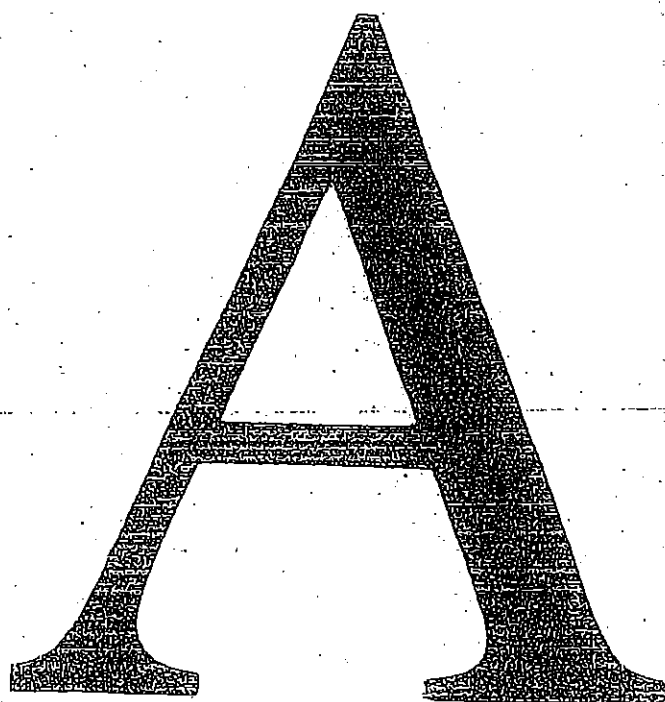
ORDERED that the application is denied.

Dated: **AUG 21 2018**
at Buffalo, NY



EUGENE M. FAHEY
Associate Judge

*Description of Order: Order of the Supreme Court, Appellate Division, First Department, entered May 22, 2018, denying defendant's application for a writ of error coram nobis.



INMATE GRIEVANCE COMPLAINT
ATTICA CORRECTIONAL FACILITY

68487-17

FEBRUARY 20, 2017

(20)

KEVIN DAVIS, #07-A-5542 Housing Unit "C" block 31 Co. 18 CELL
Program NONE

Almost (1) ONE YEAR AGO I UNDERWENT "PROSTATE CANCER" SURGERY. THE PRIMARY RECOVERY OF RADIATION TREATMENT IS FROM (6) SIX MONTHS TO (1) YEAR, plus Iodine Seed Implant. I am still very much EXPERIENCING complications from the surgery "INFECTION" extending from pus that I notice in my UNDERWEAR URINATING constantly burning SENSATION WHEN I URINATE MORE THEN (10) TIMES AT NIGHT absolutely NO ERECTION, this BEEN GOING ON SINCE THE SURGERY. I am in CONSTANT PAIN. I WAS ISSUE PAMPERS TO STOP THE "PUS" FROM GOING ON MY UNDERWEAR. THE MEDICATION THAT I am taking is IS NOT WORKING as follow: SILODOSIN 8MG CAP, SULFAMETHOX/TMP DS 80/160 MG TABLETS, and OXYBUTYNYNIN 5MG TABLETS.

ACTION REQUESTED: I NEED MEDICAL ATTENTION TO GET CURE FROM THE EFFECTION "Ouch" SURGERY.

KEVIN DAVIS, #07-A-5542
"C" block 31 Co. 18 CELL

INMATE GRIEVANCE COMPLAINT

(20)

*Needs medical
attention*

Grievance No.

08487-17

C-27-28

Attica

CORRECTIONAL FACILITY

Date: *2/22/17*Name: *Davis, K.*Dept. No.: *07A5542*Housing Unit: *C-31-18*

Program: _____

AM

C-27-28 PM

(Please Print or Type – This form must be filed within 21 calendar days of Grievance Incident)*

Description of Problem: (Please make as brief as possible) _____

Grievant
Signature: _____

Grievance Clerk: _____

Date: *FEB 22 2017*

Advisor Requested

☐ YES☐ NO

Who: _____

Action requested by inmate: _____

The Grievance has been formally resolved as follows: _____

*311*This Informal Resolution is accepted:
(To be completed only if resolved prior to hearing)Grievant
Signature: _____

Date: _____

If unresolved, you are entitled to a hearing by the Inmate Grievance Resolution Committee (IGRC).

* An exception to the time limit may be requested under Directive #4040, section 701.6(g).

Response of IGRC: Upon chart review of Davis, Kevin 07A5542 he was last seen by a provider to address his medical issues on 2-15-17. He is referred for further testing upon Albanys approval His medical needs are being addressed.

3/3/17

Date Returned to Inmate: _____ IGRC Members: _____

Chairperson: _____

Return within 7 calendar days and check appropriate boxes.*

☐ I disagree with IGRC response and wish to appeal to Superintendent.

☐ I have reviewed deadlocked responses. Pass-Thru to Superintendent.

☐ I agree with the IGRC response and wish to appeal to the Superintendent.

☐ I apply to the IGP Supervisor for review of dismissal.

Signed: _____
Grievant

Date

Grievance Clerk's Receipt

Date

To be completed by Grievance Clerk.

Grievance Appealed to the Superintendent: _____
Date

Grievance forwarded to the Superintendent for action: _____
Date

NAME: DAVIS, KEVIN

DIN: 07A5542 DOB: 09/29/1953

CURRENT FAC: ATTICA GEN

REFERRING FAC : ATTICA GEN

REFERRAL NUMBER: 17030901.03M

REFERRAL DATE : 02/15/17 01:07P TELEMED: N<N>

REFERRAL TYPE : PROCEDURE

TYPE OF SERVICE: CYSTOSCOPY

REFERRAL STATUS: SCHEDULED

URGENCY OF CARE: ROUTINE

INTERPRETER:

MEDICAL HOLD: NO

TYPE:

REASON CODE:

EXP. DATE:

TRANSPORTATION : N WHEELCHAIR N NURSE N AMBULANCE N LITTER N HCA

SENSORIAL IMPAIRMENT:

REFERRED BY: STEPHEN LASKOWSKI, MD

APPOINTMENT: 04/20/17 11:30A

REVIEWED BY: STEPHEN LASKOWSKI, MD

POS: ERIE COUNTY MEDICAL CEN.

PROV: TURECKI, JAMES-URO

REASON FOR CONSULTATION:

USER: 03/01/17 12:39P C000SML

(HX: PROSYAYE CA; URO REC CYS FOR FURTHER EVAL.)

(CURRENT SYMPTOMS: INCONTINANT OF URINE; PSA 2.25; URE NOT PERFORMED-KNOWN C)

(A-WOULD NOT EFFECT MANAGEMENT.)

()

()

=====

ATTENTION: DO NOT INFORM INMATE OF FUTURE APPOINTMENT(S)

CONSULTANT REPORT:

S:

Henaturra & history of prostate
Ca s/p radiation/seeds.

O:

Had cystoscopy showing proximal urethral
stricture had DVJU. ^{20F}~~18F~~ Foley

A:

left in place

P:

- Foley to be removed 4/24/17

- Cipro 500mg PO BID x 5d

- Lortab 5/325 PO q6h PRN pain x 3d

- Follow up urologic clinic 1mo.

CONSULTANT SIGNATURE: [Signature]

DATE: 4/20/17

IF FOLLOW-UP/PROCEDURE RECOMMENDED - REQUESTED BY ___ / ___ / ___

* CONSULTATION IS A RECOMMENDATION. FINAL DETERMINATION WILL BE MADE BY THE
INMATE'S NYSDOCS PHYSICIAN.

dg
4/21/17

5/06/17 7:47:43
HSC4781

NYS DEPARTMENT OF CORRECTIONAL SERVICES
HEALTH SERVICES SYSTEM
REQUEST AND REPORT OF CONSULTATION

PAGE 1

NAME: DAVIS, KEVIN

DIN: 07A5542 DOB: 09/29/1953

CURRENT FAC: ATTICA GEN

REFERRING FAC : ATTICA GEN

REFERRAL NUMBER: 17166451.01M

REFERRAL DATE : 04/21/17 10:27A TELEMED: N<N>

REFERRAL TYPE : FOLLOW-UP

TYPE OF SERVICE: UROLOGY

REFERRAL STATUS: SCHEDULED

URGENCY OF CARE: ROUTINE

INTERPRETER:

MEDICAL HOLD: NO

TYPE:

REASON CODE:

EXP. DATE:

TRANSPORTATION : N WHEELCHAIR N NURSE N AMBULANCE N LITTER N HCA

SENSORIAL IMPAIRMENT:

REFERRED BY: DEBBIE GRAF, RPA

APPOINTMENT: 05/19/17 12:30P

REVIEWED BY: DEBBIE GRAF, RPA

POS: WENDE RMU

PROV: TURECKI, JAMES-URO

REASON FOR CONSULTATION:

BY:

USER: 04/21/17 10:27A C000DSG

(S/P CYSTOSCOPY WITH PROXIMAL URETHRAL STRICTURE 4/20/17, FOLEY TO BE REMOVE)

(D PRIOR TO VISIT, ON CIPRO, NEEDS F/U AT WENDE IN 1 MONTH)

(

(

(

(

ATTENTION: DO NOT INFORM INMATE OF FUTURE APPOINTMENT(S)

CONSULTANT REPORT:

S:

O:

P:

PSA 1.62

12/16

1.88

11/16

S/P Dru 4/17

urethral stricture found

urgency
wge w/out

creat 1.03
7/17

4/17
4/17

④ H/u

① stop S/C000DSG

DATE:

CONSULTANT SIGNATURE: 8/17
IF FOLLOW-UP/PROCEDURE RECOMMENDED - REQUESTED BY

* CONSULTATION IS A RECOMMENDATION. FINAL DETERMINATION WILL BE MADE BY THE INMATE'S NYSDOCS PHYSICIAN.

② ✓ PSA JULY 2017

③ ✓ start oxybutynin ER 10 mg daily po

8/16/17 10:57:05
HSC4781

NYS DEPARTMENT OF CORRECTIONAL SERVICES
HEALTH SERVICES SYSTEM
REQUEST AND REPORT OF CONSULTATION

PAGE 1

NAME: DAVIS, KEVIN

DIN: 07A5542 DOB: 09/29/1953

CURRENT FAC: ATTICA GEN

REFERRING FAC : ATTICA GEN

REFERRAL NUMBER: 17214646.01M

REFERRAL DATE : 05/22/17 11:17A TELEMED: N<N>

REFERRAL TYPE : FOLLOW-UP

TYPE OF SERVICE: UROLOGY

REFERRAL STATUS: SCHEDULED

URGENCY OF CARE: ASSIGNED

INTERPRETER:

MEDICAL HOLD: NO

TYPE:

REASON CODE:

EXP. DATE:

TRANSPORTATION : N WHEELCHAIR N NURSE N AMBULANCE N LITTER N HCA

SENSORIAL IMPAIRMENT:

REFERRED BY: DEBBIE GRAF, RPA

APPOINTMENT: 09/01/17 12:30P

REVIEWED BY: DEBBIE GRAF, RPA

POS: WENDE RMU

PROV: TURECKI, JAMES-URO

REASON FOR CONSULTATION:

RECEIVED
SEP 05 2017

USER: 05/22/17 11:17A C000DSG

(FOLLOWED BY UROLOGY FOR URETHRAL STRICTURE, S/P DVIU 4/17, MEDICATIONS ADJU)

(STED, RECOMMENDATIONS FOR U IN AUGUST WITH PSA)

(

(

(

ATTENTION: DO NOT INFORM INMATE OF FUTURE APPOINTMENT(S)

CONSULTANT REPORT:

S:

O:

A:

P:

voiding
fine

CONSULTANT SIGNATURE:

DATE: / /

IF FOLLOW-UP/PROCEDURE RECOMMENDED - REQUESTED BY / /

* CONSULTATION IS A RECOMMENDATION. FINAL DETERMINATION WILL BE MADE BY THE INMATE'S NYSDOC'S PHYSICIAN.

9/11/17

①

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⑭

⑮

INFIRMARY 24 HOUR ADMISSION & OBSERVATION SHORT FORM

Davis, K.
Patient's Name07A5542
DIN#A171ca
Facility

ADMISSION NOTE

Admit to infirmary for cystoscopy 4/20/17

Deborah S. Graf, PA-C
DEA # MG0344539

4/19/17 at 9am

Date/ Time of Admission

Date/ Time Completed

NORUMB RRM

Physician's Signature/ ID#

S/P cystoscopy 4/20/17. DISCHARGE SUMMARY which revealed proximal
~~Scheduled for cystoscopy 4/20/17. Report to follow.~~may all p procedure if stable
urethral structure. Foley removed 4/24/17 and
4/20/17 8:15am voiding mal. successful
On Cipr. F/U Urology in 1 month. Stable for allDeborah S. Graf, PA-C
DEA # MG0344539

Date/ Time of Discharge

Date/ Time Completed

Physician's Signature/ ID#

HEALTH PROVIDER'S ORDER SHEET

Drug Sensitivity yes/no Specify: NKDA

DATE	TIME/ AM/PM	ORDER	SIGNATURE/ CREDENTIALS	*MAR	*REQU	*MEDT	ACTION TAKEN SIGNATURE/ CREDENTIALS
4/19/17		NS daily / PRN NPO p m n to wife					

VITALS								TREATMENT OR MEDICATION DOSE & ROUTE & DATE OF MD ORDER			INITIAL	DATE	TIME
DATE	TIME	URINE	STOOL	BP	T	P	R						
4/19/17	9am	98/50	PA	135/76	97°	57	16	Hankins 10 units Sq.					
4/20/17	8pm	97/49		139/81	97°	69	16	Regular Insulin (ox B) N					
4/20/17	8A	97/4		101/58	97°	60	18	meds: see MAR					
4/20/17	9A			120/72	97°	67	18						

INITIAL KEY

INITIALS	NAME
gr	Stewart, R
gr	

New orders 4-20-17 S/P CYSTO

① Cipr 500mg PO BID x 5 days

② Cipr 500mg PO BID x 5 days

② TC#3i PO q 60 PRN x 3 days V/O Dr. Jostland/affia

③ remove foley on 4-27-17

INFIRMARY 24 HOUR ADMISSION & OBSERVATION SHORT FORM

Davis

07A5542

Africa

Patient's Name

DIN#

Facility

Date	Time Incl. AM/PM	Health Provider Progress Notes (Use Black Ink) Complete with Signature/Credentials Do Not Leave Blank Lines Between Entries	Provider ID#
4/19/17	9am	Admitted to infirmary for cystoscopy 4/20/17. Pt - A+Ox3, VSS. Advised NPO p & n tonight. Understanding verbalized. By nurse Isolyn MAR's from H+. Self-carry meds with pt. J. UGARW430	
4/19/17	3:15 pm	FS 304. Lantus Insulin given subcutaneous 8 units Regular Insulin coverage. 1/m A+Ox3, resting on rounds, & medical c/o. Will monitor Stewart, RN	
4/20/17	8am	TO OSH apt. J. UGARW430	
4/20/17	8:30am	Return trip OSH. Foley patient draining amber colored urine c/ no blood. S/P Cysto- scopy @ this time - Complaint c/ Meds insulin as ordered - Verbal order to start TC#3: PO q 60 PRN x 3 days for Dr. Jaskowski - VSS	
4/20/17	12A	1/2 pain and foley leaking on rounds. TC#3 provided as ordered, extra towel provided for foley foley is draining amber urine, will pass in report that m is 1/2 leaking. & other 1/2 started at 12:30 time J. UGARW430	
4/21/17	9:25am	S: 1/2 discomfort from foley D: leg bag in place, draining amber urine A/P: (1) 1/2 cystoscopy c/ proximal urethral stricture - Cipro. may remove foley 4/24	

INFIRMARY PHYSICIAN NOTE REQUIREMENTS

New Admission - 1st two weeks, 3 notes/week

Continuing - 1/week or more frequently as indicated by Plan of Care

INFIRMARY NURSING NOTE REQUIREMENTS

New Admission - Once per shift for first 48 hours

Seriously ill - Once per shift

Chronically ill - Once per 24 hours

PROGRESS NOTES

(To be used by all Health Providers)

Davis, Kevin

07A5542

Attica

Patient's Name _____

DIN

Facility

Date	Time Incl. AM/PM	Health Provider Progress Notes (Use Black Ink) Complete with Signature/Credentials <small>Do Not Leave Blank Lines Between Entries</small>	Provider ID #
4/24/17	10:00am	S: Foley removed this am. O: sitting on bed, NAD A/P: (D) s/p cystoscopy c proximal urethral stricture. on cipro. Amo Awaiting results of voiding trial. If successful, will d/c	
4/24/17	12:30pm	Voiding trial successful. Ptable for d/c	
4/24/17	1pm	Order to discharge. Pt voided 300ml without difficulty. Self-carry meds returned to pt. - pharmacy refilled self carry meds. To flu. — JHE ARW/30	

INFIRMARY PHYSICIAN NOTE REQUIREMENTS

New Admission - 1st two weeks, 3 notes/week

Continuing - 1/week or more frequently as indicated by Plan of Care

RMU - PHYSICIAN NOTE REQUIREMENTS

III Patients - As needed based on clinical judgement

Routine Patient Encounters - Minimum 1/week or more frequently as indicated by Plan of Care

ANCILLARY SERVICES (DOCCS STAFF)

(Psychologists, physical therapists, speech pathologists, occupational therapists, clinical nutrition staff, etc.) Whenever a range of services are provided on a routine basis (single visits done on Consultation Rpt.)

INFIRMARY NURSING NOTE REQUIREMENTS

New Admission - Once per shift for first 48 hours

Seriously ill - Once per shift

Chronically ill - Once per 24 hours

RMU NURSING NOTE REQUIREMENTS

New Admission - Once per shift for first 48 hours

Critically ill - Once per shift, more frequently as condition warrants
Chronically ill - Every shift by Nurse in Charge to document findings of Nurse's Health Care Assistant (HCA), by HCA when vital signs taken, Monthly by Primary Care Nurse including complete assessment, Periodically to document encounters, i.e. changes in patient status, PRN medication administration including reason and reaction, refusal of treatment and visitors.

NAME: DAVIS, KEVIN

DIN: 07A5542 DOB: 09/29/1953

CURRENT FAC: ATTICA GEN

REFERRING FAC : ATTICA GEN

REFERRAL NUMBER: 17373015.01M

REFERRAL DATE : 09/05/17 10:27A TELEMED: N<N>

REFERRAL TYPE : FOLLOW-UP

TYPE OF SERVICE: UROLOGY

REFERRAL STATUS: SCHEDULED

URGENCY OF CARE: ASSIGNED

INTERPRETER:

MEDICAL HOLD: NO

TYPE:

REASON CODE:

EXP. DATE:

TRANSPORTATION : N WHEELCHAIR N NURSE N

AMBULANCE N LITTER N HCA

SENSORIAL IMPAIRMENT:

REFERRED BY: DEBBIE GRAF, RPA

APPOINTMENT: 01/26/18 12:30P

REVIEWED BY: DEBBIE GRAF, RPA

POS: WENDE RMU

PROV: SUFRIN, GERALD-URO

REASON FOR CONSULTATION:

USER: 09/05/17 10:27A C000DSG

(FOLLOWED BY UROLOGY FOR URETHRAL STRICTURE, S/P DVIU 4/17, ON OXYBUTYNIN, R)

(ECOMMENDATIONS FOR F/U IN JAN WITH PSA)

(

(

(

(

ATTENTION: DO NOT INFORM INMATE OF FUTURE APPOINTMENT(S)

CONSULTANT REPORT:

S:

PT is 65 Y.O. PT Had PSA

as follows

11/24/17

8/25/17

PSA

1.88 ng/ml

2.69 ng/ml

O:

11/8/17

1.48 ng/ml

In Records PT Apparently had "IMRT and Seed Implant" per note of 6/20/16. Date of Procedure Not Clear. For Prostate Cancer. In note of 12/28/14 of Patient record it is recorded that PT w/ S/P "IMRT + Brachytherapy. PT underwent DVIU on 4/20/17 for Urethral Stricture. Patient states at present He is voiding a problem. No strain to void. No decrease in force or size of urinary stream. Patient states He now has ED and is unable to attain erection. PT Has Diabetes x 13 years.

CONSULTANT SIGNATURE:

DATE: 1/26/18

IF FOLLOW-UP/PROCEDURE RECOMMENDED - REQUESTED BY

* CONSULTATION IS A RECOMMENDATION. FINAL DETERMINATION WILL BE MADE BY THE INMATE'S NYSDOCS PHYSICIAN.

Rec: PSA in April 2018
(2) RTC to see me May 2018 with results of 1

dg 1/29/18

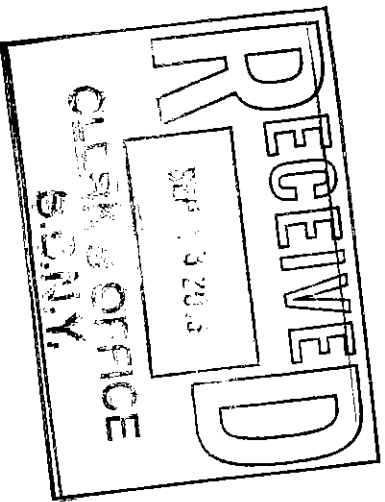
KEVIN DAVIS, 07-A-5542

ATTICA CORRECTIONAL FACILITY

639 Exchange Street

Attica, New York 14011-0149

*Pro Se
SM*



UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

DANIEL PATRICK MOYNIHAN COURTHOUSE

500 PEARL STREET

NEW YORK, NEW YORK 10007

LEGAL MAIL

ATTICA CORR FACILITY

LEGAL MAIL



2018 SEP 14 AM 9:26

RECEIVED
SDNY DOCKET UNIT